

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JUN 10 2009

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W.H. DEPUTY

JEREMY LAMONT SMITH,

Plaintiff,

vs.

RON WARD, Director, et al.,

Defendants.

No. CIV-07-413-W

ORDER

On February 24, 2009, United States Magistrate Judge Gary M. Purcell issued a Third Supplemental Report and Recommendation in this matter and made various findings and recommendations with regard to the Motion to Dismiss/Motion for Summary Judgment filed by defendants Lenora Jordan and Bill Monday. Jordan, Monday and plaintiff Jeremy Lamont Smith were advised of their right to object, and the matter now comes before the Court on the Objections to Third Supplemental Report and Recommendation filed by Jordan and Monday. The record indicates that Smith filed no objections within the allotted time.

Smith, who is African-American, brought this action against multiple defendants seeking legal and equitable relief under title 42, section 1983 of the United States Code for alleged violations of his constitutional rights. The event giving rise to this lawsuit was an assault on Smith while he was incarcerated at Oklahoma State Reformatory ("OSR") on November 8, 2005. Smith lost his vision in his left eye as a result of the attack, which he alleged was perpetrated by individuals associated with a white supremacy inmate gang.

After the racially-motivated assault, Smith was transferred from OSR to another correctional facility. He has since been released from prison.

Because Magistrate Judge Purcell has set forth in detail the relevant factual background in his Third Supplemental Report and Recommendation as well as the applicable legal analyses, the Court has repeated only what is necessary to resolve the defendants' objections. Upon de novo review of the record as to these objections, the Court concurs with Magistrate Judge Purcell's suggested disposition of the instant defendants' Motion to Dismiss/Motion for Summary Judgment.

Accordingly, the Court ADOPTS the Third Supplemental Report and Recommendation [Doc. 113] filed on February 24, 2009, and ORDERS as follows:

(1) The Motion to Dismiss [Doc. 72] filed by Jordan and Monday on August 4, 2008, is GRANTED to the extent that Smith has sought to recover monetary damages against Jordan and Monday in their official capacities. Such claims for relief are barred by the eleventh amendment to the United States Constitution. E.g., Edelman v. Jordan, 415 U.S. 651 (1974).


(2) This same Motion to Dismiss is deemed MOOT to the extent that Smith has sought prospective injunctive relief against these two defendants in their individual and official capacities. In light of Smith's transfer from OSR and his subsequent release from prison, such claims for relief are DISMISSED with prejudice.

(3) This same Motion to Dismiss is DENIED insofar as Jordan and Monday have argued under Rule 12(b)(6), F.R.Civ.P., that Smith has failed to state a claim for relief against them in Count IV (failure to protect) of the complaint.

(4) This same Motion to Dismiss is DENIED to the extent that Jordan and Monday in their individual and official capacities have argued that Smith failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997e.

(5) The Motion for Summary Judgment [Doc. 72] filed on August 4, 2008, pursuant to Rule 56, F.R.Civ.P., by Jordan and Monday in their individual capacities is GRANTED insofar as these defendants have sought judgment as a matter of law on Smith's claim for relief under the eighth amendment of the United States Constitution in Count IV (failure to protect) of his complaint. For the well-stated reasons set forth by Magistrate Purcell in the Third Supplemental Report and Recommendation, Jordan and Monday are entitled to qualified immunity on this claim.

ENTERED this 10th day of June, 2009.


LEE R. WEST
UNITED STATES DISTRICT JUDGE